

BRAND ANALYSIS OF PLAINTIFF'S MARK "LIFE IS GOOD"

Submitted by Dr. Maureen Morrin, Ph.D.

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February 1, 2006

I am an Associate Professor of Marketing at Rutgers University in Camden, NJ and I have been asked by Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, on behalf of their client, LG Electronics, U.S.A., Inc., LG Electronics Mobilecomm, U.S.A., Inc., ("LG") to prepare a report regarding the level of brand awareness of plaintiff's mark "Life is good." This report, which is written from the point of view of a consumer researcher, reviews the key elements of brand equity that I have used to assess the level of brand awareness of plaintiff's "Life is good" mark. Based on my analysis, plaintiff's "Life is good" mark does not possess a significant let alone high level of brand awareness.

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My vita is in Appendix A. Compensation and certification are in Appendix B. Prior expert witness consulting is in Appendix C. Materials reviewed are in Appendix D.

BRAND EQUITY THEORY

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A trademark is referred to by consumer researchers as a "brand." The American Marketing Association defines a brand as a "name, term, sign, symbol, or design, or a combination of them intended to identify the goods and services of one seller or group of sellers and to differentiate them from those of competition" (Keller 1998, p. 2). The value associated with a trademark is referred to by consumer researchers as brand equity. Brand equity theory is relevant to issues of trademark dilution because elements of brand equity are closely related to that of a trademark's marketplace distinctiveness and fame. I am not a lawyer and do not purport to provide any legal opinions. However, it is my understanding that trademark dilution law applies only to marks that have become commercially famous and/or distinctive in the marketplace, and thus, in order for a dilution claim to be made, an owner of a mark must first show that its mark has achieved such level of marketplace brand awareness.

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Consumer researchers view brands as efficient information signals that lower search costs and reduce perceived risks for consumers (Erdem and Swait 1998). In this way, brands act as a shorthand communication device and a means of simplifying purchase decisions (Keller 1998). In addition, brands are recognized by consumer researchers as income-generating assets. Brands can provide competitive advantages to their owners that result in financial benefits. Consumer researchers thus recognize that brands represent "enormously valuable pieces of legal property" to their owners (Keller 1998, p. 9).

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Keller's (1993) conceptualization of brand equity is probably the best known and most tested approach to understanding the customer-based equity associated with brands. According to this model, brand equity is a function of two major dimensions: 1) brand awareness or familiarity and 2) brand image. Brand awareness or familiarity refers to the ability of consumers to recall and/or recognize the brand. Research has shown that brand awareness may play the largest role in contributing to the monetary value of a brand (Srinivasan, Park and Chang 2005).

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Brand awareness is also the dimension of brand equity theory that is most closely related to the concept of trademark fame and/or distinctiveness in the marketplace.

50 Brand image refers to the set of associations consumers hold for the brand in their long-term memories, such as their attitudes, beliefs, and preferences for the brand. Brand equity is greater when more consumers are familiar with the brand (i.e., can recognize and recall it), and when more consumers hold favorable, strong, and unique brand associations in memory about it.

55 MEASURING BRAND EQUITY

Internal Measures of Brand Equity

60 Owners are able to assess various aspects of their brands' equity by conducting their own consumer surveys. Both brand awareness and brand image can be measured using a variety of approaches. Many owners conduct tracking studies of one or more aspects of brand equity to measure their competitive position in the marketplace and to detect increases or decreases in their brands' equity levels over time. Brand awareness can be determined using aided and
65 unaided memory measures to test consumers' ability to recall and recognize the brand (Keller 1998, p. 75). Attitude and perception surveys can be used to assess brand image by measuring the strength, favorability, and uniqueness of brand associations.

Brand Awareness: Recognition

70 Recognition tests provide consumers with one or more stimuli and ask them if they have previously seen or heard of them (e.g., Have you ever seen or heard of brand X?). From Appendix E it can be seen that the best-known brands from the major apparel companies enjoy recognition among nearly all consumers (e.g., Hanes 94%, Levi's 94%). Similarly, the best-known brands from the major athletic shoe manufacturers enjoy very high recognition levels
(Nike 88%, Reebok 82%, Adidas 80%).

75 Examples of marks that have recently been found to be famous according to federal dilution standards include: Dairy Queen, Prozac, Tylenol, and Velveeta (Welkowitz 2005, pp. 70-71). Examples of marks found not to be famous include: Teton Glacier (vodka), ABC (carpet), Swix (ski wax), and "O5" (clothing; Welkowitz 2005, pp. 70-71). It would seem that
80 marks deemed to be famous are those that are household names, which the majority of consumers in the U.S. would recognize. At least one legal scholar has suggested that a minimum threshold recognition level required to establish trademark fame should be 50%.¹ Although this number may be somewhat arbitrary, it would appear that a famous brand is one that would be
85 recognized by a majority of the general public.

¹ Welkowitz (2002), p. 202, quoting McCarthy.

Brand Awareness: Recall

Recall tests are more difficult for consumers, as they are provided with few or no stimuli upon which to rely as cues for retrieving information that may be stored in their long-term memories. Unaided recall tasks ask consumers to recall one or more brands without the provision of any stimulus cue (e.g., Recall all the brands you have purchased in the last week). Aided recall provides some sort of stimulus cue that aids and directs the consumer's memory process (e.g., When you think of t-shirts, which brands come to mind?).

Responses to brand awareness tests can also be analyzed on the basis of the order in which they occur and the latency or speed of response with which they are made, with brands appearing earlier in a recalled list and those provided faster in recognition tests indicating higher awareness levels. For example, "top-of-mind awareness" measures the proportion of survey respondents who recall a specific brand first in the list they mentally generate. Brands that enjoy high top-of-mind awareness scores are often the dominant brands within their product categories, exhibiting the largest market shares.

Brand Image

Brand image measures are often highly correlated with awareness measures and provide diagnostic information regarding reasons for brand dominance in the marketplace. Attitudes, for example, can be measured in a number of ways with questions such as: "How favorable is your overall attitude toward brand X?" Attitude favorability scores can then be compared across brands to establish competitive strengths within the market. The uniqueness of brand associations can also be measured (e.g., What is most unique about brand X?), as can behaviors, (e.g., Which brands of t-shirt do you usually buy?), preferences (e.g., Is brand X worth a premium price?), and other aspects of a brand's image.

Awareness of "Life is good" Mark

One of plaintiff's co-owners (Deposition of A. Jacobs, October 13, 2005) testified that the company has never conducted any formal market research to establish what is the level of brand awareness for the "Life is good" mark, or how this mark's level of brand awareness compares to that of any of its competitors.

I understand that plaintiff's expert, Mr. Robert Klein, conducted an exploratory pretest that led him to conclude that the "Life is good" mark possesses relatively low awareness and that few consumers are aware of the product categories with which it is associated (Deposition of R. Klein, January 24, 2006, p. 91). Thus, the only empirical evidence indicates a low level of awareness of "Life is good" among consumers, which is in turn supported by plaintiff's expert's testimony.²

² Mr. Klein testified (p. 42) that (1) "I think the awareness of Life is good is relatively low," (2) "I think that if you were to ask people to spontaneously name companies that make T-shirts, few of them would answer Life is good," (3) "I'm familiar with the notion of a famous mark relative to dilution. And so in that case, it would be a mark that was widely recognized by consumers, buyers, customers. You know, Coca-Cola is an example of a famous mark. So I don't think Life is good is in the category of Coca-Cola."

External Measures of Brand Equity

There are also several independent sources, external to an owner, which can be consulted to assess the level of equity associated with brands. Perhaps the most well-known brand valuation service is that of Interbrand, which annually calculates the monetary value of the top 100 brands in the world³. Interbrand, which each year publishes its list of most valuable brands in *BusinessWeek* magazine, defines brand value as the net present value of future profits attributable to the brand. Research confirming the validity of Interbrand's approach to brand valuation has made Interbrand the "world's leading authority on the financial valuation of the brand" (Madden, Fehle, and Fournier 2002).

There are other brand ranking approaches, such as that provided by Equitrend (of Harris Interactive) which has conducted annual surveys based on brand familiarity, quality, purchase intent, expectations, and distinctiveness, since at least 1989. Each year consumers are asked to rate numerous brands, which are then ranked from high to low overall and by product category (Keller 1998). The top ten brands on Equitrend's list for 2004 exhibit familiarity scores ranging from 92% to 97%.⁴ *Financial World* also publishes an annual list of the top 25 U.S. corporate brands.⁵ Several of these brand valuation methods have been shown to be highly correlated with other measures of firm value (Madden, Fehle and Fournier 2002).

The "Life is good" mark does not appear on these lists, or, to the best of my knowledge, on any brand valuation lists.⁶

150 OTHER INDICATORS

Brand Heritage

Although plaintiff has been in business for over a decade (www.lifeisgood.com), its existence and use of its brand do not approach the history or heritage of some of the most well-known brands in the U.S. which have been in existence for over a century, such as Ivory soap (since 1879)⁷ and Coca-Cola (since 1886)⁸.

Sales Revenues

One of plaintiff's co-owners testified that some of its branded competitors are Northface and Patagonia in the outdoor and adventure market, Nike, Adidas and Reebok in the athletic footwear market, and Billabong and Quicksilver in the surf and skate market (Deposition of A. Jacobs, October 13, 2005, p. 115). Plaintiff's annual sales, of approximately \$60 million (Deposition of A. Jacobs, October 13, 2005, p. 227), does not begin to approach the size of any

³ www.businessweek.com/pdfs/2005/0531_globalbrand.pdf

⁴ www.harrisinteractive.com/news/allnewsbydate.asp?NewsID=818

⁵ www.forbes.com/free_forbes/2004/0419/059tab.html

⁶ LG is on the 2005 Interbrand list, with an estimated brand value of \$2.6 billion.

⁷ www.ivory.com/PureFun_History.htm

⁸ www.coke.com

165 of these named competitors, such as Nike, which has over \$10 billion in sales⁹, Adidas/Reebok, with \$12 billion in sales¹⁰, or Quicksilver, with \$1.2 billion in sales¹¹.

Market Share

170 Plaintiff has not provided market share data of which I am aware. However, if we take its annual sales of \$60 million (Deposition of A. Jacobs, October 13, 2005, p. 227) as a percent of total sales in the men's and junior boys' t-shirt market, which in 1998 were \$3.86 billion (Knit t-shirts and tank tops made for outerwear; Appendix F), its market share in this product category would appear to be approximately 1.6%, which does not indicate market dominance or even a significant presence within the category.

175 *Advertising and Promotion Expenditures*

The plaintiff supports its business with approximately \$1.3 million annually on advertising and promotion (Deposition of A. Jacobs, October 13, 2005, p. 259), which pales in comparison to the total advertising expenditures for apparel in the U.S. in 2004 of \$2.59 billion¹², or in comparison to the amount spent by brands on Interbrand's list, such as Nike, which spent 180 \$573 million, or the Gap, which spent \$525 million in 2004¹³.

Perceptions as a Unique Source Identifier

185 Moreover, it is not clear that the "Life is good" mark is recognized by consumers as a brand, that is, as a unique source identifier, as opposed to being perceived as merely a decorative, ornamental, or whimsical phrase displayed on a product. It is possible that plaintiff's use of the words "Life is good" is perceived as an ordinary phrase about optimism, rather than as a brand. A search on Google using the phrase "life is good" generates many other types of products and services with the same name. A consumer survey to establish what proportion of consumers perceive "Life is good" as a brand or indicator of unique source, as opposed to an ordinary 190 phrase, has not been provided, to my knowledge.

CONCLUSION

195 In light of the above, and in my professional opinion, plaintiff's "Life is good" mark has not achieved any significant, let alone high level of brand awareness in the marketplace, and thus, does not possess commercial fame and/or distinctiveness that trademark dilution presupposes.

⁹ www.portland.bizjournals.com/portland/stories/2003/06/23/daily45.html

¹⁰ www.usatoday.com/money/industries/manufacturing/2005-08-04-adidas-1b-cover-usat_x.htm?csp=22_thd

¹¹ www.marketwatch.com/tools/quotes/financials.asp?symb=ZQK&sid=4014&siteid=mktw

¹² www.adage.com/images/random/lna2005.pdf

¹³ www.adage.com/images/random/lna2005.pdf

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- Keller, Kevin Lane (1998), *Strategic Brand Management: Building, Measuring, and Managing Brand Equity*, Upper Saddle River, NJ: Prentice Hall.
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- 215 Srinivasan, V. Chan Su Park and Dae Ryun Chang (2005) "An Approach to the Measurement, Analysis, and Prediction of Brand Equity and Its Sources," *Management Science*, 51(9), 1433-1448.
- 220 Welkowitz, David S. (2002), *Trademark Dilution: Federal, State, and International Law*, Washington, DC: Bureau of National Affairs, Inc.
- Welkowitz, David S. (2005), *Trademark Dilution: Federal, State, and International Law, 2005 Cumulative Supplement*, Washington, DC: Bureau of National Affairs, Inc.

225 **Appendix A**

Maureen Morrin's Vita

230 **MAUREEN MORRIN**

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School of Business, SBC 225
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102 Summit Lane
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Home: (610) 664-4789
Office: (856) 225-6713

240 **ACADEMIC POSITIONS**

Rutgers University School of Business, Camden, NJ
Associate Professor with tenure, July 2005 to present
Associate Professor, July 2003 to June 2005
Assistant Professor, July 2002 to June 2003

245 **University of Pittsburgh** Joseph M. Katz Graduate School of Business, Pittsburgh, PA
Assistant Professor, January 1998 to May 2002
(taught at St. Joseph's University Fall 2001)

250 **Boston University** School of Management, Boston, MA
Assistant Professor, September 1994 to December 1997

EDUCATION

255 **New York University** Leonard N. Stern School of Business
Doctor of Philosophy, Marketing major, Psychology minor, 1994

Thunderbird The American Graduate School of International Management
Master of Business Administration, International Marketing concentration, 1985

260 **Georgetown University** School of Foreign Service
Bachelor of Science in Foreign Service, International Economics major, 1982

HONORS/AWARDS

- 265
- Consumer Behavior Track Chair, AMA Winter Conference, St. Pete, FL Feb. 2006
 - Rutgers University School of Business Research Award (\$1,800) 2005
 - NASD Foundation two-year research grant (\$73,404) 2005
 - MSI/JCP Research Proposal Competition on Assortment, Finalist 2004
 - 270 • Bright Idea Award in Marketing and Brands, NJPRO/Seton Hall 2004
 - Rutgers University School of Business Superior Achievement Award for Teaching 2004
 - Rutgers University Research Council Grant (\$1,050) 2003
 - Direct Marketing Association Fellowship, DMDNY Conference 2003
 - Direct Marketing Association Fellowship, Advanced Institute in Direct Marketing 2001

- 275 • Faculty Representative at the Haring Symposium, Indiana University 2001
- University of Pittsburgh Central Research Development Fund Grant (\$3,525) 1999-2000
- University of Pittsburgh CIBER Grant (\$4,150) 1999-2000
- Boston University Dean's Development Grant (course relief) 1997
- Boston University Research Development Award (\$7,000) 1996
- 280 • AMA John Howard Dissertation Competition Honorable Mention 1995
- New York University Outstanding Teaching Award 1993-94
- AMA Doctoral Consortium Fellow 1993

PUBLISHED JOURNAL ARTICLES

- 285 Chebat, Jean-Charles and Maureen Morrin, "Colors and Cultures: Exploring the Effects of Mall Decor on French- and Anglo-Canadian Consumer Perceptions," (forthcoming) Journal of Business Research.
- Morrin, Maureen, Jonathan Lee and Greg Allenby, "Determinants of Trademark Dilution," (forthcoming Sept 2006) Journal of Consumer Research.
- 290 Morrin, Maureen and Jean-Charles Chebat, "Person-Place Congruency: The Interactive Effects of Shopper Style and Mall Atmospherics on Consumer Expenditures," (2005) Journal of Service Research, 8 (2), 181-191.
- Schindler, Robert, Maureen Morrin and Nada Nasr Bechwati (2005), "Shipping Charges and Shipping Charge Skepticism: Implications for Direct Marketers' Pricing Formats," Journal of Interactive Marketing, 19(1), 41-53.
- 295 Bechwati, Nada Nasr and Maureen Morrin (2003), "Outraged Consumers: Getting Even at the Expense of Getting a Good Deal," Journal of Consumer Psychology, 13 (4), 440-453.
- Morrin, Maureen and S. Ratneshwar (2003), "Does It Make Sense to Use Scents to Enhance Brand Memory?" Journal of Marketing Research, 40 (1), 10-25. Received Bright Idea in Marketing and Brands Award from NJPRO/Seton Hall, 9/2004.
- 300 Morrin, Maureen, Jacob Jacoby, Gita Johar, Xin He, Alfred Kuss, and David Mazursky (2002), "Taking Stock of Stockbrokers: Exploring Momentum Versus Contrarian Investor Strategies and Profiles," Journal of Consumer Research, 29 (2), 188-198.
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- Jacoby, Jacob, Maureen Morrin, James Jaccard, Zeynep Gurhan, Alfred Kuss, and Durairaj Maheswaran (2002), "Mapping Attitude Formation as a Function of Information Input: On-line Processing Models of Attitude Formation," Journal of Consumer Psychology, 12 (1), 21-34.
- 310 Jacoby, Jacob, Maureen Morrin, Gita Johar, Alfred Kuss, Zeynep Gurhan, and David Mazursky (2001), "Training Novice Investors to Become More Expert: The Role of Information Accessing Strategy," Journal of Psychology and Financial Markets, 2 (2), 69-79.
- 315 Morrin, Maureen and Jacob Jacoby (2000), "Trademark Dilution: Empirical Measures for an Elusive Concept," Journal of Public Policy & Marketing, 19 (2), 265-276.
- Morrin, Maureen and S. Ratneshwar (2000), "The Impact of Ambient Scent on Evaluation, Attention and Memory for Familiar and Unfamiliar Brands," Journal of Business Research, 49 (2), 157-165.
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- 320 Jacoby, Jacob, Gita Johar, and Maureen Morrin. (1998), "Consumer Behavior: A Quadrennium," Annual Review of Psychology, 49, 319-344.
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- 325

PUBLISHED BOOK CHAPTERS AND CONFERENCE PAPERS

- Michelfelder, Richard A. and Maureen Morrin (2005), "Product Diffusion Sales Forecasting Models," as
 330 Appendix F (pp. 817-827) of Gordon V. Smith and Russell L. Parr, Intellectual Property:
 Valuation, Exploitation, and Infringement Damages, Somerset, NJ: John Wiley and Sons.
- Shoaf, F. Robert, Joan Scattone, Durairaj Maheswaran, and Maureen Morrin (1995), "Gender Differences
 in Adolescent Compulsive Consumption," in Advances in Consumer Research Conference
 Proceedings, Vol. XXII, 500-504.
- 335 Douglas, Susan P., Maureen Morrin, and C. Samuel Craig (1994), "Cross-National Consumer Research
 Traditions," in Research Traditions in Marketing, edited by G. Laurent, G. Lilien, and B. Pras,
 Boston: Kluwer Academic Press, pp. 289-306.
- Morrin, Maureen (1992), "Advertising and the Self: Is Negative Affect Effective?" in Enhancing
 Knowledge Development in Marketing, AMA Summer Marketing Educators' Conference
 Proceedings, 64-71.

340

ARTICLES UNDER REVIEW

- Lee, Jonathan, Maureen Morrin and Janghyuk Lee, "Targeting Service Innovations to Non-adopters: A
 Retail Banking Illustration," under second review at Journal of Interactive Marketing.
- 345 Bechwati, Nada Nasr and Maureen Morrin, "Understanding Choice Behavior in Competitive Contexts:
 The Phenomenon of Voter Vengeance," under second review at Journal of Consumer
 Psychology.

RESEARCH IN PROGRESS

350

- Krishna, Aradhna and Maureen Morrin, "The Impact of Nondiagnostic Touch on Consumer Perceptions,"
 write up in progress.
- Morrin, Maureen, Susan Broniarczyk, Jeffrey Inman and John Broussard, "Boundary Conditions for the
 1/n Heuristic," data analysis for study 3 in progress. Research proposal was finalist in MSI/JCP
 355 proposal competition on choice and assortment 4/2004.
- Morrin, Maureen, Susan Broniarczyk, Jeffrey Inman and John Broussard, "Exploring Gender Differences
 in Retirement Investing Behavior," data analysis for study 1 in progress. Research proposal was
 basis for NASD \$73,404 grant received 2/2005.
- 360 Bickart, Barbara, Maureen Morrin and S. Ratneshwar, "Admitting to Not Knowing: Understanding
 Consumers' Trust in Financial Advisors," data collection for study 4 in progress.
- Lwin, May, Jochen Wirtz, Aradhna Krishna and Maureen Morrin, "The Relative Impact of Scent versus
 Color on Consumer Memory for Brand Information," data collection for study 2 in progress.
- Kaufman-Scarborough, Carol, Eric Bradlow, Maureen Morrin and Greg Petro, "Improving the Crystal
 Ball: Integrating Retail Buyer and Consumer Forecasts," data analysis for study 1 in progress.
- 365 Chebat, Jean-Charles and Maureen Morrin, "The Impact of Ambient Scent and Music on Consumer
 Perceptions of Time," data analysis for study 1 in progress.
- Yordanova, Gergana, John Hulland, Maureen Morrin, Barry Schwartz and Andrew Ward, "Re-
 Examination of Decision Maximization: Psychometric Properties and Derivation of a Short
 Form," data analysis across multiple studies in progress.
- 370 Lee, Janghyuk, Kyungdo Park, Jonathan Lee and Maureen Morrin, "Exploring the Antecedents of Brand
 Trust for High Technology Products," data analysis in progress.

INVITED LECTURES

- 375 "The Impact of Ambient Scent on Consumer Behavior: Recent Findings," invited talk presented at
 University of Montreal, January 25, 2006.

- "The Impact of Ambient Scent on Consumer Behavior: Recent Findings," invited talk presented at University of Kansas, Distinguished Visiting Scholars Series, October 21, 2005.
- 380 "When Relying on Your Attitudes Leads to Poorer Quality Decision-Making Behavior" with Susan Broniarczyk, Jeff Inman, and John Broussard, invited talk presented at University of Montreal, HEC, November 23, 2004.
- "When Less Is More: The Impact of Fund Assortment, Decision Alternatives, and Decision Maker Style on Retirement Investing Behavior" with Susan Broniarczyk, Jeff Inman, and John Broussard, invited talk presented at Wharton, Decision Sciences Seminar, October 25, 2004
- 385 "Atmospherics and Mall Shopper Response," invited talk presented at University of Montreal, HEC, March 2004.
- "401k Assortment and Investor Decision Making: Impact of Decision Flexibility," invited talk presented at Villanova University, February 2004.
- 390 "Ambient Scent and Consumer Behavior," invited lecture presented in Ph.D. proseminar at New York University, November 21, 2003.
- "The Impact of Ambient Scent on Evaluation, Attention and Memory for Familiar and Unfamiliar Brands," presented at University of Pittsburgh Brown Bag Seminar, October 1998.
- "Olfaction and Consumer Processing of Brand Information," invited talk presented to Boston University Psychology department, December 1997.
- 395 "Memory Models in Consumer Behavior," invited lecture presented in Columbia University Marketing Ph.D. Seminar, New York, NY, February 1996.
- "The Impact of Brand Name Dilution on Memory Retrieval and the Formation of Consideration Sets," invited talk presented at University of Connecticut seminar series, Storrs, CT, November 1995.
- 400 "The Application of Memory Theory to Consumer Behavior Issues," invited lecture presented to Boston University Psychology department, Boston, MA, October 1995.

CONFERENCE PRESENTATIONS

- 405 "Does it Pay to Beat Around the Bush? Salesperson Motives and the Effects of Obfuscation versus Honesty in Communications," with Barbara Bickart and S. Ratneshwar, presented by Barbara Bickart, as part of special session titled, "Marketplace Motives and Consumer Meta-Skepticism," Association for Consumer Research conference, October 2, 2005, San Antonio, TX.
- "Colors and Cultures: Exploring the Effects of Mall Decor on Consumer Perceptions," with Jean-Charles Chebat, presented at the Royal Bank International Research Seminar, September 24, 2005,
- 410 Montreal, Canada.
- "Person-Place Congruency: The Interactive Effects of Shopper Style and Atmospherics on Consumer Expenditures," with Jean-Charles Chebat, presented at the Summer APA Conference Division 23, Washington, DC, August 19, 2005.
- 415 "Does It Pay to Beat Around the Bush? Persuasion Knowledge and Obfuscation Versus Honesty in Salesperson Communications," with Barbara Bickart and S. Ratneshwar, presented by S. Ratneshwar as part of special session titled, "Persuasion Knowledge and Its Effects on Marketing Communications," at Society for Consumer Psychology Winter Conference, St. Petersburg, Florida, February 25, 2005.
- 420 "When Less Is More: The Impact of Fund Assortment, Decision Alternatives, and Decision Maker Style on Retirement Investing Behavior" with Susan Broniarczyk, Jeff Inman, and John Broussard, presented as part of special session titled, "Predicting, Encouraging, and Improving Consumer Decisions Through Product Assortments," at Society for Consumer Psychology Winter Conference, St. Petersburg, Florida, February 25, 2005.
- 425 "When Less is More: The Impact of Fund Assortment, Decision Alternatives and Decision Maker Style on Retirement Investing Behavior," with Susan Broniarczyk, Jeff Inman, and John Broussard, presented as part of special session titled, "You (Still) Can't Always Get What You Want: Why

Greater Choice is Demotivating," Association for Consumer Research conference, Portland, Oregon, October 9, 2004.

"Shipping Charges and Shipping Charge Skepticism: Implications for Direct Marketers' Pricing Formats," with Robert Schindler and Nada Nasr Bechwati, presented by R. Schindler, Fordham University Pricing Conference, New York, NY, November 2003.

"Outraged Consumers: What Lights Their Fire?" with Nada Nasr Bechwati, competitive paper presented by N. Bechwati, Association for Consumer Research Conference, Toronto, Canada, October 2003.

"The Importance of Barriers to Adoption for Radical Versus Incremental Service Innovations in the Retail Banking Industry," with Jonathan Lee and Janghyuk Lee, presented at INFORMS Marketing Science Conference, University of Maryland, June 2003.

"Taking Stock of Stockbrokers: Exploring Investor Decision Strategies Via Verbal Protocols," with Jacob Jacoby, Gita Johar, Xin He, Alfred Kuss, and David Mazursky, competitive paper presented at Association for Consumer Research conference, Austin, Texas, October 2001.

"The Effect of Adding and Deleting Asymmetrically Dominated Decoys on Choice" with Adwait Khare and Vikas Mittal, presented by A. Khare as part of the special session titled, "You Can't Always Get What You Want: An Examination of Consumer Responses to Constrained Choices," Association for Consumer Research conference, Austin, Texas, October 2001.

"Consumer Vengeance: Getting Even at the Expense of Getting a Good Deal," with Nada Nasr Bechwati, competitive paper, presented by N. Bechwati at Association for Consumer Research conference, Salt Lake City, Utah, October 2000.

"Does It Make Sense to Use Scents to Enhance Brand Memory?" with S. Ratneshwar, competitive paper presented at Association for Consumer Research conference, Salt Lake City, Utah, October 2000.

"A Model Selection Approach for Analyzing Repeated Measures Data Sets," competitive paper presented by Nada Bechwati at Association for Consumer Research conference, Columbus, Ohio, October 1999.

"A Review and Analysis of the *Journal of Consumer Psychology* From 1992 to 1997," with Anat Alon and Nada Nasr, competitive paper presented by A. Alon at Society for Consumer Psychology Winter conference, February 1999.

"Distinguishing Better From Poorer Decision Makers: A Study of Risk Propensity in the Face of Gains and Losses" with Jacob Jacoby, Gita Johar, Alfred Kuss, and David Mazursky, competitive paper presented by T. Heath at Behavioral Decision Research in Management Conference, Miami, Florida, June 1998.

"Olfaction and Consumer Information Processing," competitive paper presented at Society for Consumer Psychology conference, Austin, Texas, February 1998.

"Olfaction and Consumer Processing of Brand Information," poster session presented at Association for Consumer Research conference, Denver, Colorado, October 1997.

"The Impact of Atmospheric Odors on Consumer Information Processing," competitive paper with S. Ratneshwar presented at Symposium on Retail and Service Environment Atmospherics Research, Montréal, Québec, October 1997.

"Incongruity Effects in Brand Recall: When Is It Better to Be Different?," with Durairaj Maheswaran, competitive paper, presented at Society for Consumer Psychology (Division 23), American Psychological Association Conference, New York, NY, August 1995.

"The Effects of Brand Name Dilution on Memory Retrieval and the Formation of Consideration Sets," competitive paper presented at AMA Summer Marketing Educators' Conference, Washington, DC, August 1995.

REVIEWING ACTIVITY

- Editorial Review Board member *Journal of Consumer Psychology* (since 7/05)

480 • Ad hoc journal reviewer for *American Business Law Journal*, *Journal of Advertising*, *Journal of Applied Psychology*, *Journal of Business Research*, *Journal of Consumer Research*, *Journal of Marketing*, *Journal of Public Policy & Marketing*, *Marketing Letters*, *Psychology and Marketing*.

485 • Ad hoc conference reviewer for Academy of Marketing Science, American Marketing Association, Association for Consumer Research, Fordham Pricing Conference, Royal Bank International Research Seminar, SCP-Sheth Dissertation Competition, Society for Consumer Psychology, Society for Marketing Advances.

COURSES TAUGHT

490 • Consumer Behavior: Undergraduate, MBA, Doctoral
 • Customer Analytics: MBA
 • Database Marketing: Undergraduate, MBA
 • Marketing Management: Undergraduate, MBA, EMBA
 • Marketing Theory and Strategy: Doctoral

495 INDUSTRY EXPERIENCE

Playtex Family Products Stamford, CT 1989-1990

Associate Brand Manager

500 Developed annual marketing plans for company's core brand, Playtex Tampons. Managed brand's profit and loss statement, volume forecasts, trade and consumer promotion plans, and advertising strategy.

James River Corporation Norwalk, CT 1987-1989

Assistant Brand Manager

505 Developed annual marketing plans for Bolt Paper Towels and Zee Paper Napkins. Responsible for volume forecasts, trade and consumer promotion budgets. Helped establish quality control system at recently acquired paper mill.

Ted Bates Advertising New York, NY 1985-1987

Account Executive

510 Managed broadcast and print campaigns for Kal Kan Pedigree Dog Food. As brand liaison for client and agency, provided strategic analyses of market positioning, media spending, and creative.

MEMBERSHIPS

515 • Association for Consumer Research
 • American Marketing Association
 • Direct Marketing Association
 • Society for Consumer Psychology

520

Appendix B
Compensation and Certification

525 Dr. Morrin is being compensated at the rate of \$175 per hour.

"I certify that the information in this report is, to the best of my knowledge, true and accurate."

Signed: Maureen Morrin Date: February 1, 2006
(Maureen Morrin)

530

Appendix C

Prior Expert Witness Consulting by Dr. Maureen Morrin

535 **The Fresh Market:** A Study to Measure the Likelihood of Confusion, If Any, Between the
Fresh Market and Arthur's Fresh Market, December 2005, on behalf of Finnegan Henderson for
The Fresh Market grocery store.

540 **Intel:** Study to Measure Whether the Intell Mark Dilutes the Intel Mark, completed September
2004, on behalf of Howrey, Simon, Arnold and White, LLP, for the Intel Corporation.
Deposition given in December 2004. This case was settled out of court prior to trial.

Verizon: Report on the Impact of the Yellow Book Advertising campaign completed December
2003, on behalf of Finnegan, Henderson for Verizon.

545

Citizens National Bank: Several reports provided on behalf of Malone Middleman, PC and
Finnegan Henderson for Citizens National Bank of Evans City, PA. First report and deposition
completed June 2002. Second report completed February 2003. Second deposition given in
March 2003. Rebuttal report completed March 2003. Report on the Effectiveness of Trademark
550 Disclaimers completed March 2003. Trial testimony given in May 2003.

Appendix D

555

Materials Reviewed

In the course of this investigation Dr. Morrin reviewed the following materials:

560

- References as cited in the report
- Plaintiff's website
- Deposition testimony of A. Jacobs, J. Jacobs, R. Klein
- Google search of "life is good"

565

570

Appendix E

Familiarity Scores Reported by *Brandweek* for Apparel and Athletic Shoe Companies

575

United States top five apparel companies by sales, brands, company location, advertising expenditures, advertising agency, agency location, and brand recognition in dollars and percentages for 2004

133658033 _Title: Spring is in the air, and so is a rebound._Source: Brandweek, 46 (25): S22, June 20, 2005. ISSN: 1064-4318_Publisher: BPI Communications, Inc._

580

BRAND	COMPANY NAME, LOCATION	LEAD AGENCY, LOCATION
1. Sara Lee	Sara Lee, Chicago	Various
Hanes	"	Martin, Richmond, VA
585 Champion	"	N/A
L'eggs	"	N/A
2. VF	VF, Greensboro, NC	Various
Lee	"	Fallon, Minneapolis
590 Wrangler	"	Toth, Concord, MA & various
Vanity Fair	"	In-house
3. Levi Strauss	Levi Strauss, San Francisco	Bartle Bogle Hegarty, New York
595 Levi's	"	Bartle Bogle Hegarty, New York
Docker's	"	FCB, San Francisco
4. Liz Claiborne	Liz Claiborne, New York	Gotham, New York
Liz Claiborne	"	"
600 Dana Buchman	"	In-house
5. Jones New York	Jones Apparel, Bristol, PA	AR Media, New York

605

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615

BRAND	TOTAL SALES (billions)	MEDIA EXPENDITURES (millions)	QUALITY
1. Sara Lee	\$6.4	\$42.7	
Hanes			7.70
Champion			6.96
L'eggs			6.75
2. VF	6.0	102.7	
Lee			7.05
Wrangler			7.14
Vanity Fair			6.33
3. Levi Strauss	4.1	122.1	
Levi's			7.80
Docker's			7.36

620	4. Liz Claiborne	3.6	17.1	
	Liz Claiborne			7.04
	Dana Buchman			7.22
	5. Jones New York	2.9	34.6	7.41

625	BRAND	FAMILIARITY	PURCHASE INTENT	EQUITY
	1. Sara Lee			
	Hanes	94%	7.78	71.0
	Champion	47%	6.77	58.9
630	L'eggs	57%	5.87	53.4
	2. VF			
	Lee	81%	6.52	59.7
	Wrangler	78%	6.49	59.1
	Vanity Fair	33%	5.55	50.1
635	3. Levi Strauss			
	Levi's	94%	7.30	69.0
	Docker's	76%	7.07	63.4
	4. Liz Claiborne			
	Liz Claiborne	50%	6.09	56.3
640	Dana Buchman	5%	6.12	53.0
	5. Jones New York	25%	6.74	61.0

Sources: Hoover's Online; TNS (media); Harris Interactive/EquiTrend:
pxFxPI=E (see key, page S20)

645

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650 **United States top eight athletic shoe manufacturers by sales, company location, advertising expenditures, advertising agency, agency location, brand, and brand recognition in dollars and percentages for 2004**

Title: Many paths to cool, but big gains for all. Source: Brandweek, 46 (25): S53, June 20, 2005.
ISSN: 1064-4318_Publisher: BPI Communications, Inc._

655	BRAND	COMPANY NAME, LOCATION		
	1. Nike	Nike, Beaverton, OR		
	2. Reebok	Reebok, Canton, MA		
660	3. New Balance	New Balance Athl Shoe, Boston		
	4. Adidas	Adidas America, Portland, OR		
	5. K-Swiss	K-Swiss, Westlake Village, CA		
	6. Converse	Converse, North Andover, MA		
	7. Vans	Vans, Santa Fe Springs, CA		
665	8. Puma	Puma North Am., Westford, MA		
	BRAND	LEAD AGENCY, LOCATION		
670	1. Nike	Wieden + Kennedy, Portland, OR		
	2. Reebok	mcgarrybowen, New York		
	3. New Balance	Boathouse, Needham, MA		
	4. Adidas	TBWA, SF; 180, Amsterdam		
	5. K-Swiss	Gale Group, New York		
675	6. Converse	Butler, Shine, Stern, SF		
	7. Vans	In-house		
	8. Puma	In-house		
680	BRAND	TOTAL SALES (millions)	MEDIA EXPENDITURES (millions)	QUALITY
	1. Nike	\$3,225.0	\$134.1	7.38
	2. Reebok	1,087.0	31.0	7.11
685	3. New Balance	1,022.0	10.9	7.60
	4. Adidas	790.0	52.0	7.16
	5. K-Swiss	395.0	29.0	6.94
	6. Converse	305.0	3.9	6.92
	7. Vans	240.0	4.6	6.69
690	8. Puma	209.0	6.2	6.72
	BRAND	FAMILIARITY	PURCHASE INTENT	EQUITY
695	1. Nike	88%	6.84	64.2
	2. Reebok	82%	6.67	61.1
	3. New Balance	58%	7.18	65.9
	4. Adidas	80%	6.62	60.8
	5. K-Swiss	41%	6.15	56.9
700	6. Converse	66%	6.05	55.7
	7. Vans	27%	5.38	50.4
	8. Puma	54%	5.45	51.4

Sources: Sporting Goods Intelligence (sales, figures are

705 wholesale plus outlet/concept stores for U.S. only);
TNS (media); Harris Interactive/EquiTrend: QxFxPl=E
(see key, page S20)

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Appendix F 1998 Men's and Junior Boys' Apparel Shipments in the U.S.

Table 43. Quantity of Production and Value of Shipments of Men's and Junior Boys' Apparel: 1998 and 1997

[Quantity in thousands of units. Value in millions of dollars]

Product description	Total		Fourth quarter		Third quarter		Second quarter		First quarter	
	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
1998										
Suits	8,116	707.9	1,629	148.7	1,988	188.9	2,047	168.8	2,452	201.5
Coats, jackets, and vests:										
Down and feather filled coats, jackets, and vests	191	6.5	48	2.1	43	2.0	50	1.2	50	1.2
Dress and sport coats (tailored)	10,535	678.7	2,031	141.5	3,041	201.3	2,251	145.6	3,212	190.3
Heavy nontailored coats and jackets	12,337	461.6	3,139	123.9	3,231	134.3	3,016	100.4	2,951	103.0
Lightweight nontailored coats and jackets	15,459	330.5	4,624	92.4	4,081	88.7	3,537	75.4	3,217	74.0
Overcoats and top coats	1,279	79.7	367	20.5	355	26.2	271	16.3	286	16.7
Raincoats	1,405	36.7	318	9.2	349	11.9	366	7.6	372	8.0
Separate vests	1,237	26.9	258	5.3	313	6.7	313	6.9	353	8.0
Work jackets	6,272	178.8	1,933	54.5	1,751	55.9	1,572	45.0	1,016	23.4
Tops:										
Woven dress and business shirts	47,580	656.8	9,758	185.2	11,019	148.4	12,582	149.5	14,221	173.7
Woven sport shirts	18,539	233.9	4,024	51.5	4,541	58.3	5,210	60.3	4,764	63.8
Work shirts	55,272	540.8	15,547	150.7	13,880	144.3	13,028	125.2	12,817	120.6
Knit T-shirts and tank tops made for outerwear	785,475	3,860.6	192,987	852.7	196,728	979.0	209,636	1,083.7	186,124	945.2
Sweatshirts	146,131	793.6	30,851	195.1	41,840	269.9	36,908	192.0	36,532	136.6
Other knit shirts	93,380	773.3	18,037	150.4	24,446	201.8	27,091	226.5	23,806	194.6
Sweaters	11,239	175.2	2,394	53.3	3,694	54.1	2,950	39.7	2,201	28.1
Bottoms:										
Dress and sport trousers	105,896	1,979.5	27,115	501.4	29,965	587.8	25,368	463.1	23,448	427.2
Jeans	192,846	3,065.4	54,569	874.9	51,884	852.4	45,895	724.2	40,498	613.9
Jean-cut casual slacks	29,606	294.3	6,730	75.0	7,724	77.4	8,569	77.0	6,583	64.9
Shorts	67,463	518.0	13,646	98.3	9,729	57.0	20,593	153.5	23,495	209.2
Sweatpants	40,313	230.6	8,428	47.6	10,405	78.2	11,555	86.9	9,925	37.9
Workpants	46,904	516.2	12,496	129.3	11,433	126.0	11,489	130.1	11,486	130.8
Underwear and nightwear:										
Pajamas and nightwear	7,835	56.8	2,453	19.2	1,818	15.4	1,892	11.7	1,672	10.5
Robes	4,163	52.9	1,569	29.6	1,481	17.3	719	3.0	394	3.0
Underwear total	925,387	1,345.3	204,062	356.8	241,976	308.1	199,202	381.0	280,147	299.4
Thermal underwear	39,640	130.6	8,508	28.3	9,927	33.0	10,236	33.8	10,969	35.5
Undershirts (1/4 sleeve and athletic types)	406,535	488.8	71,246	127.6	118,138	136.1	79,897	119.5	137,254	105.6
Knit undershorts and briefs	432,547	608.7	113,277	171.9	102,505	117.0	95,599	196.5	121,166	123.3
Woven boxer shorts	46,665	117.2	11,031	29.0	11,406	22.0	13,470	31.2	10,758	35.0
Other garments:										
Coveralls, overalls, and jumpsuits	12,515	309.2	3,231	78.4	4,581	92.5	2,389	71.7	2,314	66.6
Jogging and warmup suits	3,581	30.6	776	8.1	820	9.3	1,099	7.3	886	5.9
Playsuits	39	0.4	6	0.1	11	0.1	13	0.1	9	0.1
Ski apparel	(D)	(D)	(D)	(D)	(D)	(D)	(D)	(D)	(D)	(D)
Swimwear	1,094	20.4	239	4.0	222	4.4	285	5.4	348	6.6
Team sports uniforms	13,535	168.0	3,449	37.2	2,684	39.5	3,112	43.1	4,290	48.2
Washable service apparel	31,751	266.6	7,472	64.6	8,222	65.0	8,077	69.4	7,980	67.6

Source: Bureau of the Census, December 2000

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